PARLIAMENTARY DEBATES

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Public Bill Committee

SMART METERS BILL

Fifth Sitting

Tuesday 28 November 2017

(Morning)

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Saturday 2 December 2017

The Committee consisted of the following Members:

Chairs: †Mike Gapes, Mrs Cheryl Gillan

Carden, Dan *(Liverpool, Walton)* (Lab)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Freer, Mike *(Finchley and Golders Green)* (Con)
† Gibson, Patricia *(North Ayrshire and Arran)* (SNP)
† Grant, Bill *(Ayr, Carrick and Cumnock)* (Con)
† Harrington, Richard *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Kerr, Stephen *(Stirling)* (Con)
† Lewis, Clive *(Norwich South)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Morris, Grahame *(Easington)* (Lab)
† Pawsey, Mark *(Rugby)* (Con)
Quince, Will *(Colchester)* (Con)
† Ross, Douglas *(Moray)* (Con)
† Smith, Laura *(Crewe and Nantwich)* (Lab)
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Warman, Matt *(Boston and Skegness)* (Con)
† Watling, Giles *(Clacton)* (Con)
† Western, Matt *(Warwick and Leamington)* (Lab)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)

Jyoti Chandola, Clementine Brown, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 28 November 2017

(Morning)

[Mike Gapes *in the Chair*]

Smart Meters Bill

9.25 am

The Chair: Before we continue line-by-line consideration, I have a few preliminary announcements. Please switch your electronic devices to silent. If you wish to take your jacket off, Mr Freer, you may do so. Tea and coffee are not allowed during sittings. I remind Members that today's selection list is available in the room and on the Bill's webpage. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or similar issues. A Member may speak more than once in a single debate. If any Member wishes to press any other amendment or new clause in a group to a vote, they need to let me know. I shall work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments when we reach them.

Please note that decisions on amendments take place not in the order they are debated, but in the order they appear on the amendment paper. In other words, debate occurs according to the selection list, but decisions are taken when we come to the clause that an amendment affects. Decisions on adding new clauses or making changes to the long title are taken towards the end of proceedings but may be discussed earlier if grouped with other amendments. Finally, I shall use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following debate on the relevant amendments. I hope that explanation is helpful.

Clause 1

Smart meters: extension of time for exercise of powers

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 13, in clause 1, page 1, line 21, at end insert—

"(4A) The provisions set out in subsections (2) and (3) do not allow the Secretary of State to remove any licensable activities presently enabled in respect of smart meter communications or other activities."

This amendment prevents the Secretary of State from using the extension of these powers to remove currently licensable activities.

The amendment is fairly straightforward and relates to a memorandum that the Department for Business, Energy and Industrial Strategy submitted to the Delegated Powers and Regulatory Reform Committee concerning the arrangements that the Department wishes to make through the Bill. Among other things, it justifies—or attempts to justify—a number of the provisions. I will refer to that memorandum on a number of occasions today.

The memorandum sets out what the Bill is expected to do, what the delegated powers taken in the Bill do, the justification for those delegated powers, whether they should be undertaken by the affirmative or negative procedure, and the effect of those powers on the wider considerations about smart meter roll-out. The amendment addresses the passage of concern in the memorandum relating to clause 1, which is about what powers the Secretary of State will have as a result of the smart meter roll-out extension to 2023. The memorandum states that the power taken in clause 1 also enables the Secretary of State to "remove any licensable activities" added by virtue of the power. It goes on to state that this Government have no intention of using the power in that way, and that at the moment the only licensable activity that could be removed is a revision of a smart meter communication service—the DCC's service.

I appreciate the Government's honest intention when they state that they do not intend to "remove any licensable activities", but although the memorandum suggests that there is only one such activity, that could change over time. Paragraph 19 of the memorandum states that the Secretary of State could remove other existing licensable activities that have licences already agreed, given that they have the power elsewhere to modify licences over and above the DCC's service. As the Committee has already discussed, that seems a power too far for the Secretary of State.

As Labour members of Committee have already indicated, we do not think for a moment that the present Minister or Secretary of State—both of whom are extremely honourable—would seek to do anything that would go beyond the proper exercise of power regarding the extension of time. However, as the Committee has discussed, we are supposed to be legislating for all circumstances. We are not legislating on the basis of our judgment about the goodness and honourability of present company; we are legislating for all time and all purposes. What we put into law must stand up against all intentions of future Governments of whatever colour.

I suggest that although the memorandum contains a statement about the Government's intentions on the use of the power to remove licensable activities, the use of such a power is not actually prevented by anything in the Bill. It is therefore prudent to include in the Bill—this is what the amendment would do—a statement that the Secretary of State should not remove any licensable activities, which in theory they could do by virtue of the power. The amendment would clarify what the Secretary of State should not do, as well as what they can do.

Given our duties and responsibilities as legislators, that prudent course of action would ensure that the Bill is as clear as it can be, and that it gives the Government of the day the right powers on the extension of time, but does not enable them to overreach themselves with those powers and undertake activities that the Committee would not want them to do. I would think that everyone in the Committee could agree to putting this provision in the Bill, because it would in no way fetter the Government's aims for the roll-out; it would simply clarify the framework within which the power can be

operated. I think that would help rather than hinder the process, and therefore I commend the amendment to the Committee.

The Chair: Minister?

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Richard Harrington): Thank you, Mr Gapes. I wondered whether you were looking for someone else to stand. I thought that perhaps there had been a reshuffle without my being told, or something like that.

The Chair: Well, I would not know; that is beyond my powers.

Richard Harrington: It is beyond most of our powers, but I am delighted still to be in position to try to resist the amendment—in a civilised way, I hope—and to reassure the hon. Member for Southampton, Test. As ever, I accept fully the nature and tone of his amendment, because he means exactly what he says. I take a similar approach in reading his amendment and trying my best to consider whether it is practical to agree with what he says or whether there is a way I can accept what he says so that he accepts what I am trying to say. I am conscious that hon. Members are itching to make a lot of progress on the Bill, but I will try to answer his points.

I think that the hon. Gentleman would accept, despite the fact that we are trying to do this in different ways, that the Government are trying to protect the interests of energy consumers in this whole programme. The only current licensable activity is the provision of a smart meter roll-out communication service, so the situation is comparatively simple. Like a lot of things in legislation, it is really more complicated than that, but that is what it boils down to. We have done this to ensure that we have a communications and data system that supports secure, reliable and interoperable services for smart meters. The Government would not remove this service without putting in place an alternative. We currently consider that doing so would not be in line with the Secretary of State's principal objective, for which he or she must use their discretion.

Let me explain the concern from the Government's point of view. In future, the whole smart meter system will expand and become, we hope, exponentially greater than it is now—not just because everyone will have one, but because it will be able to do so many other things that we all want. I am thinking of operations with apps. Perhaps water meters or other devices in people's homes could be applied to it. The current licensable activity may then be redundant, because things will have developed beyond that. In such circumstances, it would not be appropriate, or indeed in line with better regulation principles, to leave in place a licensable activity that is not required in the future.

I hope that everyone accepts that the DCC has a fundamental role in driving the smart meter benefits. I do not currently consider that we would exercise the power to remove licensable activities, but I feel that it is necessary for the Secretary of State to keep that, given that principal objective. I hope that the hon. Gentleman will consider our concerns, just as I have tried to consider his, and agree to withdraw the amendment.

Dr Whitehead: I am not quite sure what that meant. I understand that at present, as the memorandum indicates, there is only one licensable activity that could be removed, and that is indeed the DCC service. The Minister rightly puts it to us that it is difficult to conceive of circumstances in which the Government would decide to remove that licensable activity, but that is not what legislation is about. Legislation is not about whether, on the balance of probability and taking all things into account, including the bona fides of the Government, something that one might legislate on should not be legislated on because it is unlikely to happen; legislation is supposed to ensure that, in all circumstances we can think of, those things that we do not want to happen should not happen.

Although I take on board what the Minister has said—I do not doubt for one moment his bona fides—I do not think that he has added anything to the debate this morning, other than to repeat what was in the Department's memorandum.

Richard Harrington: The hon. Gentleman has been gracious in his comments about me personally, about the Secretary of State and, I hope, about most people who would do the job, but should there one day be an evil Secretary of State who, in the middle of the night, while plotting the destruction of society, realised that they could use this power, which in the scale of things is pretty tiny, how would they use it in so destructive a way that a future Parliament might think, "Oh, I wish we had been stronger in this Bill and that we had the power suggested by the then hon. Gentleman"? I hasten to add that I am not hoping that he will have gone to the great energy supplier in the sky, as we all will at some stage. The serious point is this: were that to happen, what is the bad way in which this power could be used?

Dr Whitehead: A future Secretary of State does not necessarily have to have quite the intents suggested by the Members making non-verbal interventions. I can easily envisage such circumstances. For example, bearing in mind that the present DCC is set up as the subsidiary of a private company—

Clive Lewis (Norwich South) (Lab): A cartel.

Dr Whitehead: Indeed. The DCC was established in a deliberate way. In effect, there was an auction to decide who would run the DCC after it was set up and it was put into the realm of Capita, so the established DCC is a subsidiary of that company. However, if a future Government thought that it was a particularly bad idea for the DCC to be a subsidiary of Capita, or any other company, they might decide that it was worth enduring the hiatus in the roll-out in order to recast how the DCC operates. It is not beyond consideration that such a Government might think, "The easiest way to do this is by taking the licensable activities away from the DCC as it stands"—in its present arrangement—"and introducing new licensing arrangements." Having done that under clause 1, to establish a DCC that would not be a subsidiary of Capita, there might be a different arrangement.

Some Members might think that that Government would be pretty misguided, and possibly fairly reckless, in putting the roll-out in jeopardy. But the fact that I

[Dr Whitehead]

have set out a scenario in which a Government, acting on a reasonable and rational consideration, might do that—whether or not one thinks it is a reasonable thing to do—indicates that one could easily envisage circumstances, contrary to what the Minister says, in which the power accorded by clause 1 could be implemented for purposes that we might not think would be helpful to the roll-out of smart meters but could easily be undertaken. Therefore, although that scenario is not very likely, having a line in the legislation to prevent it from happening seems to me a prudent way to proceed.

9.45 am

I have not heard from the Minister why that would not be a prudent way to proceed, why it could not be done or why it would in some way jeopardise the integrity of the Bill or have—as I appreciate some amendments do on occasions—equal and opposite effects elsewhere in the Bill that would make the amendment inappropriate. I have not heard an example of anything in the amendment that is non-executable in the Bill. The amendment appears to be in good order, and if we believe that to be the case, the only judgment we should make is whether it adds something to the Bill. In my opinion it does. I cannot really see why it should not be accepted for that reason. It is not a matter of party animus or oppositionism; it is about whether the Bill should be strengthened as has been suggested.

I cannot help thinking that, if the amendment is not accepted, there must be deeper reasons that the Minister has not articulated this morning. I am willing to hear about those other reasons, if there are any, but certainly in this debate, unless a deeper reason is about to arrive, I have not heard exactly what that reason might be.

Richard Harrington: I do not know whether to thank the hon. Gentleman for giving way or not.

The Chair: I think you are responding to the amendment. It makes it a bit more procedural. You are allowed to speak more than once, and we have not yet got to the summing-up speech from Dr Whitehead.

Richard Harrington: I was going to thank the hon. Gentleman for giving way, but I will not now. I am grateful that I am not abusing the system, which I was going to.

I think we have to agree to disagree on this point, because I believe that, given the restrictions in the Bill and everything else, it is a minor point. I accept that the hon. Gentleman is not doing it to bring down the Government or anything like that, because opposition is opposition. I respect him not just for his position but, much more than that, for the person he is. If he wishes to press the amendment to a vote, then I understand that I have not persuaded him. If he wishes me to ponder the matter further, or even to meet him and talk about it, I am perfectly prepared to do so. I think it is making a mountain out of a molehill.

He thinks changing the licensable activity is quite an important thing that needs to be brought before Parliament. Any decision to remove a licensable activity would still be subject to parliamentary scrutiny through the affirmative procedure, but it is ultimately a question of what discretion a Secretary of State should have in the consumer's interest. We could politely agree to disagree on that, but if the hon. Gentleman would like to discuss this further and withdraw his amendment for that purpose, I would respect both things. At the moment, I disagree with him not because we are the Government and he is the Opposition but because I do not see the significance of the points he is making.

Dr Whitehead: This is not a cosmically important thing, and I agree with the Minister that it is unlikely to change the course of the roll-out, but I say gently that that is not necessarily what we are supposed to do in Committee. We are not supposed just to grade the importance of the things in the Bill and then decide to act on them according to their relative importance; we are supposed to examine the Bill line by line and, between us, suggest ways that it can be strengthened so that it is as good as we can make it when it returns on Report and Third Reading. That means that things may be added to the Bill that are not in themselves important but could be regarded, in the context of the work we are supposed to do in Committee, as a result of our discharging our responsibilities properly.

I am in a bit of a dilemma. I agree with the Minister that this is not a really important thing, but I cannot see for the life of me why it cannot be placed in the Bill so that at the end of its passage it is as good as we, between us, can make it and that it contains things that, although they may not be that important, add to its overall strength. I simply have not heard any reason why that cannot be done. I have heard reasons why the amendment is not that important. The Minister might suggest—and he might be right—that if we put it to a vote we would over-emphasise its importance. However, I am—"annoyed" is not quite the right word—a little concerned that something that can be seen as reasonably obvious, if not as significantly strengthening the Bill, regardless of our party positions or of the position we take on the Bill overall, is rejected in this way. For that reason, I seek to divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 1]

AYES

Debbonaire, Thangam	Morris, Grahame
Gibson, Patricia	Smith, Laura
Lewis, Clive	Western, Matt
McCabe, Steve	Whitehead, Dr Alan

NOES

Freer, Mike	Ross, Douglas
Grant, Bill	Tolhurst, Kelly
Harrington, Richard	Warman, Matt
Kerr, Stephen	Watling, Giles
Pawsey, Mark	

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 4—*Conditions of extension of time for exercise of powers—*

'(1) Prior to making any directions during the extended time period provided for in section 1, the Secretary of State shall commission a review which shall consider—

(a) data access and privacy issues arising from the smart meter rollout,

(b) the benefits realised during the smart meter rollout and the scope for greater benefits to be realised,

(c) the effectiveness of the policy framework for future smart metering operations.

(2) The Secretary shall lay the report of the review in subsection (1) before each House of Parliament.'

This new clause requires the Secretary of State to carry out a review of matters relating to the current status of the smart meter rollout.

Richard Harrington: The new clause would make it a condition of primary powers being extended that the Secretary of State carry out a review of smart meter roll-out, and that the review cover the data access and privacy issues, the benefits realised during the roll-out and the scope for greater benefits to be realised, and the effectiveness of the policy framework for future smart metering operations. I will now turn to each area that it is suggested be covered in the review in turn.

In 2012, the Government established a data access and privacy framework to ensure consumers' interests are protected. This framework applies to domestic consumers and micro-businesses. It seeks to strike a balance so that consumer privacy is protected while enabling the proportionate access to data necessary to deliver energy system-wide benefits. For example, the framework determines the level of access that energy suppliers, networks and authorised third parties can have to energy consumption data. It also establishes the purpose for which data can be collected and the choices that consumers have about that. The central principle is that consumers have control over who can access their detailed energy consumption information, except when it is required for regulated purposes, a good example of which is billing.

The framework was welcomed when it was established, and the Information Commissioner's Office, which is the data protection regulator, commented that it felt the framework offered a good level of control and protection for consumers. We publicly committed to carrying out a review of the framework, and intend to do that in 2018. Subject to the extension of the relevant powers, we will then be able to act quickly if there is any evidence that the framework is not delivering against its objectives.

On the second area, the Government are focused on the delivery of benefits and have regularly updated the cost-benefit analysis for the smart metering programme to reflect the latest available evidence. We are also very keen to ensure that even greater benefits can be achieved than forecast. For example, that is why we published our clean growth strategy and made a commitment in it to undertake further research and to trial approaches to using the data from smart meters to provide tailored post-installation energy efficiency advice on heating—the largest part of domestic energy bills—so that consumers will be able to make further changes to reduce consumption while maintaining comfort levels. That will further increase benefits.

We are looking at innovations that build on the smart metering infrastructure more widely, for example through the use of consumer access devices, which will enable greater home automation. I think that that is critical for the future and know that hon. Members on both sides of the Committee will agree—the nirvana is everybody having an app on their phones, knowing exactly what is going on in their house or flat and being able to adjust accordingly their patterns of usage, not just of heating but when they want to put on a washing machine or any other device, to save electricity. In fact, that may be done automatically in the future through algorithms and things. I could not possibly understand how they work, but I know they will transform people's lives. As we know, the whole smart meter system is to provide the building blocks for that to happen.

In terms of policy framework—the third area that was suggested for review—we have made a public commitment to undertake a post-implementation review of the smart metering programme, drawing on evidence from the roll-out itself and a period after its completion during which smart metering systems will have been operating in steady state. The review will evaluate the overall programme, the realisation of the benefits and the overall effectiveness of the policy and regulatory framework.

10 am

In summary the Government agree—I agree—with the sentiment of the proposed new clause. I hope that my response shows that we are planning actively to review the framework next year; we are focused on the realisation of current benefits and we intend to carry out a post-implementation review in 2021. However, I do accept the shadow Minister's point. There is value in routinely taking stock of progress while this continues. With that in mind, if it is acceptable to the hon. Member for Southampton, Test—I know my suggestion on the previous amendment was not, but on this new clause I hope that he will accept that I have thought about what he wants—I will undertake to include as part of the smart meter implementation programme an annual report to go through progress in these areas formally. We would obviously make copies of that report available to both Houses.

Taking a step back to look at clause 1, I want to consider it as a whole. I have considered all the points mentioned on previous days in Committee. It is probably too early in the morning—I do not want to exercise the patience of Committee members—to continue, but I have thought a lot about the meter asset providers, the extension of powers and all those points. I hope that when we continue our discussions on those points, formally or informally, the hon. Gentleman will accept the fact that we have considered all of them in the Bill. Although I have not accepted some of his amendments, I have accepted their spirit, because our goal is a self-sustaining system, governed and operated by industry, with full oversight by Ofgem, delivering benefits to consumers.

I know, having heard the oral evidence—I had heard many of the participants before—a lot more work is needed to ensure the roll-out is a success. The Government have a critical role in continuing to lead the programme, during and immediately after the roll-out, to ensure that benefits are delivered, while informing Parliament, as I have explained.

I hope that given my commitment to report progress on those areas as part of our annual report, the hon. Gentleman will feel able to withdraw new clause 4. I commend clause 1 to stand part of the Bill.

Dr Whitehead: There is not too much more to say on clause 1 stand part, inasmuch as we have undertaken a good examination of the clause. We have made a number of suggestions to strengthen it. Although we had a little fall-out just recently, in general the discussion has proceeded in such a way that we are satisfied that the points we have raised have either been taken into account, explained properly, or given rise to some undertakings about how matters might proceed not within the context of the clause, but perhaps administratively in backing up the clause. Therefore we would not want to oppose clause 1 stand part.

New clause 4 has been grouped with the clause 1 stand part debate. That is sort of the wrong way around, because the Minister has given his assurances about new clause 4 before I had the opportunity to say what I wished to have assurances about, but we will let that one pass and proceed as if it was the other way around. Just to explain to the Committee, new clause 4 is drafted very specifically, again, in the context of the memorandum in which the Department set out the Delegated Powers and Regulatory Reform Committee, where the Department states its justification for taking powers in clause 1. It says:

"We consider this extension was necessary so that the Government can remove any barriers to the roll-out of smart meters which emerged and ensure that benefits for consumers are maximised in the continuing operating of smart meters following completion of the roll-out".

It then states:

"The Government has made public commitments to undertake reviews in the following areas of the smart meter roll-out…data access and privacy to ensure the regulatory framework remains fit for purpose in 2018…benefits realised during the roll-out to assess whether we can do anything to encourage greater benefits in 2019…overall effectiveness of the policy framework post-implementation for future smart metering operations in 2021".

As hon. Members will observe, that is exactly what has been set out in subsection (1)(a), (b) and (c) of our new clause. The commitments to reviews that the Department has already undertaken in principle for the extended period of the roll-out are transferred to the Bill. The Minister has already mentioned this morning his commitment to undertake an annual review that, I assume, would incorporate these particular concerns and considerations.

Richard Harrington: That is a perfectly fair assumption —that is our intention.

Dr Whitehead: I thank the Minister for that clarification. A commitment to an annual report to be laid before both Houses goes a long way towards satisfying our concerns about whether these particular wider commitments should be placed in the Bill. I thank the Minister for his commitment and will not press new clause 4 to a vote.

Patricia Gibson (North Ayrshire and Arran) (SNP): I want briefly to add my voice and that of my party on new clause 4. I know that the Minister will agree that we need continually to reassure consumers that their data are securely and robustly protected in the course of this roll-out. I know that he will agree how important it is to ensure that meters currently installed are always to the highest specification of function and data security.

The Minister will also be concerned—like, I am sure, everybody else in the room—about the evidence that was taken that the smart meter network is being installed before its requirements as an internet-connected energy system have been fully determined. We would expect—I know that the Minister will feel this—that the Minister would do everything in his power to ensure that consumers are best protected amid this roll-out.

I impress on the Minister and remind him of the concerns raised in March 2016 in the *Financial Times* that GCHQ had intervened in smart meter security, claiming that the agency had discovered glaring loopholes in meter design. As we move forward with these considerations, I want to impress those concerns on the Minister.

Richard Harrington: I thank the hon. Lady for her comments and am very pleased that GCHQ did that, because it shows how it was included in the process of getting to the security stage that we are at today.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

Smart meter communication licensee administration orders

Question proposed, That the clause stand part of the Bill.

Dr Whitehead: We have talked about the extension period; the second part of the Bill is about administration orders. These might be made in the context of the DCC's failure to operate either because it has gone bankrupt or because its supply of funds dries up or is diluted for any reason and it can no longer continue—it is entirely dependent on the resources it receives from suppliers to operate. A number of clauses in the Bill relate to setting up a procedure to enable the roll-out to continue by recovering the DCC's procedures, if and when in administration, in such a way that the flow of the roll-out is not interrupted. At this stage of the legislation, therefore, we need to concentrate on whether the things put forward—what can and should be done by Government to make that change while at the same time continuing with the roll-out in the unlikely event of administration—are good enough to ensure the roll-out continues and we achieve the purpose of ensuring a smooth passage.

I want to make two brief points, to which the Minister may want to respond. The first is about provisions in the Bill relating to what are unlikely events that probably will not happen, but conceivably could. It might be prudent to legislate to ensure that we are in a position to do something in the unlikely event of that happening. We had a debate about that recently in this Committee. What we are doing in considering the second part of the legislation is roughly what we were doing in the first part to try and strengthen the Bill. We did not succeed in doing that, but we will not be churlish or childish about that. We will go along with the idea that this is an unlikely event, for which we have to make prudent legislation to ensure that catastrophe does not take place as far as the roll-out is concerned.

The second point is that we are legislating this morning for an event that could occur to an organisation that has been in operation for several years already without this legislation being on the statute book. One might ask, therefore, what was happening in the meantime. Were we operating over a period of time where there was no protection for the smart meter roll-out programme from the possible bankruptcy or administration of the organisation that was essential to the running of the whole operation? That seems to me to be a considerable omission on the Government's part.

Steve McCabe (Birmingham, Selly Oak) (Lab): We seem to have heard a lot in this Bill about these unlikely events that are never going to happen, but for which we have got to take precautions. I remember being told that banks were too big to fail as well. I wonder whether the point my hon. Friend is making is that we have got to a situation where we have a multibillion pound investment in the DCC—all of it coming out of customers' pockets—and yet there is no protection at this moment if things were to go pear-shaped?

10.15 am

Dr Whitehead: My hon. Friend is right. That is the situation at the moment, and that is what the Bill, very late in the day, seeks to rectify. I am not saying that one should not take part in the rectification of that problem. Clearly it should be rectified, and we need legislation that protects us in those circumstances.

I wonder if, as a gateway into this part of the Bill, the Minister might share some thoughts with the Committee on why this has not happened before and why we have had these circumstances for several years. I appreciate that it was before the DCC went live, which was only relatively recently, but the DCC was set up and a lot of money was put into it. All the various arrangements went through, and it was by no means impossible for that problem to arise to date. I am pleased that we are taking this step, but slightly alarmed that we have not done it previously. Can the Minister shed any light on why that was the case? Did the Government simply forget? Was the legislation so difficult to undertake that it has not been drafted until now, or was it not thought necessary to have this protection prior to the DCC being in its present position? It would be useful to have some guidance on what thinking went on before the legislation appeared.

Richard Harrington: Before making a few brief comments, I will try to answer the two very reasonable questions raised by the hon. Members for Southampton, Test and for Birmingham, Selly Oak.

I will deal with the unlikely event point first. The Government have to try to gauge how unlikely an unlikely event is. I hope the hon. Member for Southampton, Test accepts that it is a question of judgment. We have to draw the line somewhere on the level of unlikeliness, and we drew it on the wrong side of what he thinks is unlikely.

Dr Whitehead: The theory of relative unlikeliness.

Richard Harrington: Yes, that is very good. I wondered what the hon. Gentleman did his doctoral thesis on, and now I have discovered it.

It is a judgment call. I hope I made it clear in my previous comments that I do not think his amendment is unreasonable, mad or anything like that; it is just that we have to try to make a judgment, and it is on a different side of the line to his.

The question of why we have not done this before is, like many of the hon. Gentleman's points, very valid. It is one of the first questions I asked officials when considering this. I have been given a note, which I have not read; I will answer from what I think, rather than what I have been told. I asked that very question. I understand that this was consulted on in 2011 by the Department. The official reason—genuinely—is that there is a lot of competition for parliamentary time, and this is the first opportunity we have had to deal with something that is reasonable, but at the highest level of unlikeliness on the unlikely-o-meter, if there were such a thing. There must be an unlikeliness app to gauge the level of unlikeliness.

I personally think this should have been done before. It was probably less important than it is now and going forward, simply because of the scale of use and the containability of unlikeliness. This was the first opportunity I had to introduce the clause on what to do in the event of these unlikely circumstances, and it is important. It is to stop other interested parties putting in administrators. There are always commercial administrators—for example, companies that have not been paid. There is a normal system to do this that still exists, but it does not have the level of control that the Department or Ofgem would have.

This is important. I could spend 10, 15 or 20 minutes of the Committee's time going through the reasons why it is important, but those reasons will be debated later on in the Bill's passage. I hope I have answered the points raised to the best of my ability.

Steve McCabe: I do not want to dwell on this, but I am genuinely curious. When the Minister says that the Department consulted on this and decided that there was no need for this sort of protection or safeguard because of parliamentary time, or whatever reason, who did they consult? Presumably not the customers, who would have been the first to say, "Hang on, we don't like the sound of this."

Richard Harrington: I thank the hon. Gentleman for that comment. Those consulted were stakeholders and so on. I would remind the hon. Gentleman and the shadow Minister that the DCC only went live in 2016. I accept that there would have been a point between 2016 and now that would have been ideal. It is not uncommon to have special administrative regimes in this kind of world—this is the first one for this particular administrator—and it seems obvious for Government or the regulator to have powers basically to override the normal administration system. Given the millions of smart meters around, and given in particular the system whereby they are all electronically talking to each other—which we all want—it would have been negligent for the Government to leave this for another four or five years. It is quite reasonable for this to be the first legislative slot since it went live.

Having said that, I accept that there has been no unreasonable comment in the points made by the hon. Gentleman. There is plenty to discuss in this Bill, and

[Richard Harrington]

everyone would agree that a special administration regime guards against a risk that the licensee might go into normal insolvency proceedings, which is a standard process within the Companies Act 2006 and something that companies do. The reason that this is a level of unlikeliness that makes it really unlikely is that the income side is more or less guaranteed, as we heard in the evidence from the experts. It is prudent, given that these risks could be there, to have safeguards in place. That is what the clause does. These measures all have precedents in other special administration regimes for energy networks and suppliers. The clause is a sensible measure and I commend that this clause stand part of the Bill.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

Objectives of a smart meter communication licensee administration

Steve McCabe: I beg to move amendment 8, in clause 3, page 2, line 34, after "efficiently", insert ", transparently".

This amendment would make it an objective of the smart meter communication licensee administration to operate in a way which would allow the general public to be aware of his functions.

It is probably quite fortunate that this debate follows the discussion that just took place, because the purpose of amendment 8 is to make it an objective of the smart meter communication licensee administration to operate in a way that would allow the general public to be aware of its functions.

We are talking about a situation that is clearly about accountability, albeit one that people think is unlikely. This is a situation in which a massive investment goes wrong and the Minister is forced to set up a special administration regime. In those circumstances, it makes sense for people to know what is going on. It is a matter of accountability for the public, who, as I have said a number of times, are paying for this programme through their bills. It is therefore right that if ever a situation arises in which a smart meter communication licensee administration is in place as a result of a failure of the DCC, that administration should operate in a way that is transparent, open and obvious to Members in all parts of the House and, most importantly, obvious and transparent to members of the public.

Stephen Kerr (Stirling) (Con): How does the hon. Gentleman envisage there being such an event without it being transparent to Members of Parliament and to the public? In what scenario would that be possible?

Steve McCabe: That is a good question, but unless I have misunderstood its wording, the Bill gives the Minister the power to set up this regime but does not impose any requirement to disclose to the wider public, or indeed to someone like the hon. Gentleman, exactly what the Minister is about. That is the very essence of this amendment. Maybe it will help the hon. Gentleman if I give the wider context to why the public needs, at this stage, a transparently operated smart meter communication licensee administration.

The thing we cannot escape, and should not try to, is the huge cost of this programme. It is enormous. In recent correspondence, the Government are on record as saying that the average household is expected to save £11 a year on its energy bills in 2020, rising to £47 by 2030. If I have the figures right, that equates to £300 million off domestic energy bills in 2020, rising to about £1.2 billion by 2030.

The Minister told us earlier that the cost-benefit analysis is regularly updated. I am not sure that is strictly true. It is probably fair to say that the cost-benefit analysis is modified, but to the best of my knowledge there have been two to date. The figures that I am quoting are based on the cost-benefit analysis conducted in 2016, which some of the expert witnesses called into question, as Members will remember. It is possible that the figures were accurate at the time of publication, and the benefits quoted would be welcome, were it not for the fact that the increasing cost of the roll-out falls to the consumer.

If Members recall, Mr Bullen told us that the cost of the smart meter roll-out per household was £13 a year, up from £5 only the year before, when the cost-benefit analysis was conducted. On that basis, the net benefit to the average household lucky enough to have a functioning smart meter that is not in dumb mode is actually minus £2, while those who have not even had a smart meter installed at this stage are paying £13 for the roll-out without deriving any benefit at all. Centrica—the people who own the gas—claimed last week that the costs of subsidising the £11 billion smart meter roll-out programme are just included in their customer bills. They said that, presently, large suppliers see these rising costs as among the main reasons for customer bills going up.

Stephen Kerr: I appreciate the points that the hon. Gentleman is making, but I am not entirely clear how this pertains to his amendment, which concerns an administrative arrangement, should we get into that scenario, which we can hardly envisage, where power companies are failing and so forth. I am not sure I understand the relevance of his comments about those costs to the amendment.

The Chair: Order. I ask for interventions to be brief if possible. Secondly, before the hon. Member for Birmingham, Selly Oak responds to that intervention, I am not sure whether this is the appropriate place to have this debate. We will be discussing the cost-benefit analysis issue in later clauses, and this amendment is about the objective of the smart meter communication licensee administration. Please can we try to have a narrowly focused debate about the amendment before us, not a general debate that we can have later?

10.30 am

Steve McCabe: I am grateful for your guidance, Mr Gapes, but I was stressing the point that we would not need to know were it not for the fact that this is going to cost so much. If something that costs so much goes wrong—especially when that cost is borne by the consumer—we should fear a situation in which those

who were instrumental in making all the decisions up to that point can be absolved of all responsibility, because the Minister steps in to offer a new regime to protect and safeguard the failed organisation without you, Mr Gapes, or me, or anyone in this room having any idea what happened, what will happen, who will pay for it, and what it will cost. That is the object of the exercise.

I am grateful to you, Mr Gapes, for your guidance about not dwelling too much on the figures, but those figures are considerable and I will certainly seek an opportunity to share some of them with you later in our proceedings, if at all possible. I believe that the public have every right to know those figures, but I am grateful for your guidance on that point.

For the purposes of the amendment, I simply stress that it would be wrong to have a situation where the Minister was forced to take such an action, especially if there is any suggestion that that action could be taken behind closed doors and would not be visible, transparent and available to everyone. It should be open to the kind of scrutiny that I think all members of the Committee would believe essential were an operation of this size to go wrong, land the consumer with an enormous bill and require a special administration intervention.

Matt Western (Warwick and Leamington) (Lab): I rise in support of what I think is a simple and honest amendment that seeks only to underline the need for transparency—that is something we should be stressing throughout the Bill. We could ask whether the words "efficiently" and "economically" really need to be included in the Bill, and of course they do, but likewise we also need the word "transparently".

If I understood correctly, this process started some years ago and we are now legislating for it. A moment ago it was asked why we are doing this only now. That seems a little incredible to someone who walked into this place a few months ago, but be that as it may, we are where we are. What we are picking up from consumers is not necessarily distrust, but there is some confusion out there. Any means by which we can improve the transparency of the programme and provide clarity for consumer and suppliers is surely vital. I support the amendment.

Dr Whitehead: In supporting this amendment, will hon. Members cast their eyes across clauses 2 and 3 that set up the smart meter communication licensee administration, and the special administrative regime—the SAR? We must emphasise what a special circumstance this is. This would be where the body that had been charged with the whole roll-out of smart meters, which had millions of pounds under its guidance, had gone into administration—for whatever reason. As the Minister points out, traditional methods are available for dealing with a company that has gone into administration.

A special administration regime would, among other things, ensure that the special nature of the DCC and its complete centrality to the roll-out was not subsumed under that traditional method of administration, which might cause damage given what the administrator might decide to do with the company if there were not a regime that was carefully worded and sorted out. The administrator might decide that a number of functions that otherwise would have been carried out by the DCC would not be—indeed, we may debate some of those additional functions later. There would be the whole question of the administration of that company being brushed under the carpet, being put in the hands of the administrator and set aside from the public gaze.

A lot of company administrations take place in circumstances of some opacity—that is, it is difficult to ascertain exactly why the company went into administration, the intentions of the administrator or even where the appointment of the administrator came from. It is difficult to find out what the administrator thinks they are going to do with the company concerned. There are whole series of things that, in terms of general company law, ought to be a little more transparent but generally are not; that is how it works as far as company law is concerned.

However, this is a very different circumstance: the entity is an essential public function as well as a company, which might be placed into administration. It is therefore right that, in clauses 2 and 3, we do more than say that we want to make sure that the administration is in the right hands and that nothing happens with the administration that will cause damage to the passage of the DCC as the organiser of the smart meter roll-out. That is what all the paragraphs in clause 3, and some of those in clause 2, are about. They are concerned with the smooth transfer and running of the system. There is not one word about any light that should be shone on what would have happened to that company previously, and what is the public good of the company subsequently, once it comes out of administration.

Steve McCabe: The Public Accounts Committee, the National Audit Office and the Energy and Climate Change Committee have all expressed doubts about the operation of the programme, its transparency and the escalating cost. In such circumstances, if the Minister was forced to use the additional powers because of failure, surely it would be a complete dereliction of duty not to make what had happened obvious.

The Chair: Order. Before the shadow Minister responds, I ask Members again to focus their remarks, if possible, specifically on the amendment.

Dr Whitehead: My hon. Friend underlines the importance of putting the word "transparently" somewhere in clause 3. An event may happen that the public would properly be interested in; they may be concerned about what might happen to them as far as administrative processes are concerned or about the effect on their bills of an event that caused substantial additional money to be spent over and above what had already been set aside. We must emphasise that all the costs that have been set out for the smart meter roll-out—be that the cost of the smart meter, the cost of the advertising campaign or the cost of the DCC itself—will, one way or another, be recovered from customers' bills.

With that in mind, putting in the Bill a requirement for processes to be fully transparent would serve the consumer positively. I support the addition of that single word—"transparently"—to the Bill. I cannot see any downsides to that. It would not in any way impede the process of administration. All the objectives and procedures in clause 3 to ensure that the DCC runs as

[Dr Whitehead]

effectively as possible and protects the roll-out are sound. Inserting the word "transparently" would add to that protection and do nothing to undermine it, so I hope that the Minister will seriously consider doing so.

Richard Harrington: I understand the purpose of the amendment well. On the surface, it seems to be a good thing. Transparency is good anyway, and I will argue that the provision would lead to transparency. It is reasonable to argue that this is an important matter and that we want everyone to know what is going on. We are all here because we are part of a democratic process; I do not think anyone could disagree with that principle.

However, I cannot agree with the hon. Members for Southampton, Test and for Birmingham, Selly Oak because of what the amendment would mean in practice for the administration. Thankfully, none of us have experience of this kind of public, as opposed to commercial, administration—I know that is not quite the technical word—and I accept that. By the way, there will be plenty of legal requirements on the administration, which I will come to in a minute. It is just totally unrealistic for an administrator, given those requirements and all the complexities that it will have to deal with, unlikely though it might be, to spend hours ensuring that the public—I think this is what the amendment would mean—are kept informed of all the administrator's moves, given that administrators have to meet plenty of requirements. I ask the Committee to bear that in mind; I cannot accept what the hon. Gentlemen said. That is not because we are secretly against transparency or anything like that.

Clive Lewis: It is not so much that the administrator would need to keep the public informed of every step they were taking, but that if the public, MPs or parliamentarians or others were interested, they would have access to the information to ensure that lessons could be learned in the future, if they felt that that was a requirement. Rather than the administrator giving out the information, it would be for the public or others to access the information; they would be able to access it.

10.45 am

Richard Harrington: I thank the hon. Gentleman for that intervention. I can see that afterwards, but not in the course of an administration, when there are very complex duties for the administrator to learn, be instructed to learn, and so on. I find this proposal quite difficult in practice; I am quite concerned about the effects of it. I am not concerned about the purposes of it, which I think are very noble. Perhaps I will answer the hon. Gentleman's question in my remarks in a way that is more satisfactory to him; I hope so, anyway. Perhaps it is a victory of hope over logic; I do not know, but we will see.

I confirm for the record that the object in clause 3 is to ensure that the DCC's functions under its relevant licences are performed efficiently and economically, pending the rescue of the company or transfer of its business. However unlikely that might be, as we know its revenues are guaranteed, we are on the Government's side, rather than the shadow Minister's side, of the line on unlikeliness. The intention behind the clause is to ensure the continuity of the smart metering service while minimising the costs incurred. In providing for continuity of services, the benefits of smart meter services are maintained and the costs—financial costs, but also the huge inconvenience that would come from any interruption to smart meter services—are avoided. I do not mean an interruption to the supply of electricity; I am talking about the gauging of how much people are using and, I hope, in the future, more fancy tricks, to allow them to control their costs, supply and everything that we have mentioned before.

Under the Insolvency Act 1986, as modified by this Bill, there is already an obligation for the name of the smart meter communication administrator to be stated on the DCC website; it should also be stated that the affairs, business and property of the company are being managed by that administrator. There are clear provisions setting out the functions of a smart meter communication administrator, including its powers.

As with the energy network operator and energy supplier special administration regimes—the nearest comparable regimes—we would expect the smart meter communication licensee SAR rules to require the smart meter communication administrator to file various documents at Companies House. That would include, for example, a copy of the administrator's proposals for achieving the objective of the smart meter communication licensee administration, which would contain information about the administration. The administrator has to submit regular progress reports. Once filed at Companies House, those documents would be available to the public and would keep them informed about the administration and its progress in the way that I hope the hon. Member for Norwich South meant in his question.

I hope that hon. Members will recognise that information would already be available to the public and other interested parties through the existing procedures to ensure transparency about the administration. I hope that they will consider the points that I have made, because they are important. This proposal implies that the administration process could be helped dramatically by the public's having access to information and knowing what is going on all the way through. I think that it is very important that the public experience no interruption whatever and that the administration is carried out quickly and efficiently. We must not forget that the whole reason for the SAR is to reassure consumers and other stakeholders that their smart meter services and the benefits that arise will be protected, and not interrupted in any way.

I state again that the administrator would be under a duty to manage the company efficiently and economically. When companies such as KPMG, PwC and other big companies act as insolvency practitioners, they do so as part of a regulated profession. All normal insolvencies, and not just special administration regimes, are covered by that. I therefore ask the shadow Minister and the hon. Members for Birmingham, Selly Oak and for Warwick and Leamington to consider what I have said and to withdraw this very reasonable amendment. I fully commend the purpose behind the amendment, but I think we are already fulfilling that purpose in this provision and with the existing rules on administration.

Steve McCabe: It is a devastating blow to hear that the Minister cannot bring himself to accept the word "transparent", but in the circumstances I do not think

that we would gain very much by pressing this to a vote. I hope that the Minister will seriously reflect on what has been said, because the circumstances in which he would have to exercise this power would be a massive failure and, almost certainly, a massive loss to the public, and I do not think anyone would be comfortable thinking that there had been any attempt to hush that up or push it to one side. I hope that he will reflect very seriously on why it has been raised. I do not wish such a failure to occur at all, but I am very clear that if it did, I would be one of the first at the front of the queue saying, "What on earth went on here?" I do not think there would be any gain in pushing it, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 14, in clause 3, page 3, line 32, at end insert "within the context of the full services offered by the DCC".

This amendment requires that any regulations about prioritisation of activities following the DCC going into administration would have to take into account the context of the full services offered by the DCC.

The amendment refers to clause 3(6), which enables the Secretary of State to make regulations specifying the activities to be undertaken in a smart meter communication licence under administration, subsequent to the DCC having been placed in that administration. The circumstances set out in subsection (6) are essentially about the extent to which the Secretary of State may say to the administrator, "You are now in the position of administrating this failed company. Because of the arrangements necessary for the roll-out of smart meters, you should make sure that, at the very least, the minimum amount of activities are carried out to enable a smooth roll-out of smart meter services."

As far as I understand it, the reason for the subsection is that as the DCC evolves it will undertake the initial core services provided in respect of the roll-out, but it may also undertake a number of additional elective services to facilitate the roll-out. It is those additional elective services that the Department mentions in the memorandum it placed in front of the regulatory Committee, stating:

"In the unlikely event that the DCC becomes insolvent, it may be necessary to prioritise certain activities of the DCC…We are not yet in a position to set out the prioritisation of the DCC's services, so soon after the start of live services…and in advance of the development of elective services. We believe that this will be possible ahead of the completion of the rollout when demand from suppliers for DCC to provide other services could be expected to have materialised."

The Department then states:

"Once we have determined the prioritisation and how it should be done, we would prepare a statutory instrument that would be subject to annulment in pursuance of a resolution of either House of Parliament."

I will come to that particular point in a moment.

The point of those particular passages, concerning clause 3(6), is that the Department is not clear what the prioritisation of the DCC services might be under administration, because the Department is not yet clear, so close to the start of live services, what range of services it would face under administration—because those services have not yet fully emerged. The Department would therefore want to determine how the prioritisation should be done, and to prepare a further statutory instrument, which would give form to that prioritisation once that is clear.

That is all very reasonable, except that something does not appear in 3(6) as it stands, or within the policy intent section that the Department has put forward as far as the regulatory Committee is concerned: any provision requiring that the services that the administrated DCC carries out at that point be as close as possible to the full range of services that were there before. It is distinctly possible for the Secretary of State to make regulations that would, for example, remove all elective services that had been developed by the DCC and concentrate just on the core services—the minimum that would enable the roll-out to limp home under the terms of administration.

The amendment seeks to give a context for what the Secretary of State may do by regulation, as far as administration is concerned, and it states that that context should be the full services offered by the DCC. Obviously, those would be the full services offered by the DCC at the point it went into administration, including those elective services which we do not fully know about at the moment. Clearly, if the DCC, prior to its administration, had developed a wider palette of services than the very minimum, it would have done so for particular reasons. I imagine that those reasons would be to assist the roll-out. Therefore, as a desideratum, under the terms of the administration, the DCC should operate post-administration as closely as possible to how it operated prior to administration.

The Secretary of State should consider, under those circumstances, what might be impossible or very difficult to achieve under a process of administration, not a wish for various services to be discontinued or downgraded. Obviously, I imagine that the Secretary of State would want to make sure that the future regulation was indeed as close as possible to what the DCC was doing before it went into administration, but I would suggest that is not entirely the point. It is necessary to put in the Bill a framework for what the Secretary of State may do under regulation, and that should be to have serious regard to the services in place prior to administration and not to be tempted, as it were, to put forward regulations or give instructions subject to regulation that did not produce an outcome post-administration that was as good as it had been pre-administration.

11 am

Richard Harrington: As with the last amendment, I perfectly understand this amendment's purpose: to require that any regulations that the Secretary of State lays down about prioritisation of DCC activities following administration

"would have to take into account the context of the full services offered by the DCC."

I understand the purpose, but I will do my best in the next few minutes to argue that there would be no effect on the policy. The precise intention of the proposed regulations is to specify the activities carried out by the DCC to which the smart meter communication administrator must give priority, and how that should be done, taking account of the full range of activities that the DCC is carrying out under its licences at that time. That is exactly what we are trying to do; we are just trying to ensure that the functions of the DCC under its licences are performed efficiently and economically, as I said before.

[Richard Harrington]

The administrator may face a judgment on which DCC services to prioritise; it is quite normal for an administrator to do that. The most appropriate judgment will depend on the circumstances, but that may not be clear to the administrator on the day that they take over the administration, and there may be a trade-off, as there are in administrations, between prioritising different services.

The clause to which the amendment relates gives the Secretary of State the power to make the regulations specifying which activities carried out by the DCC under its licences must be prioritised by the administrator, and how that should be done. As the smart metering programme develops beyond the foundation stage—the stage we are fundamentally preoccupied with as the purpose of the roll-out—we expect the number of services provided by the licensee to increase. The licensee can, for example, offer bespoke services for suppliers and others, building on the smart metering programme. I know that is what we all want. As part of that, consumers may be able to choose to give third parties permission to access their data, allowing a much wider range of energy-related services to be developed: products, advice, switching suppliers, tariff choices and all that sort of thing.

Smart metering data may also be used, where the consumer so chooses, as part of taking that service—for example, in supporting home energy management services and even for non-energy-related services, such as smart washing machines that do the laundry at different times so it costs less. That is not directly to do with the supply of energy but with the consequences that matter to most people: "How much will it cost and how can I save money?" I suppose it could be used to identify faulty or inefficient appliances, or to support carers, through a service that allows family members to be updated about changes in routine. That sounds futuristic, but there are many interesting things that could come from the programme if we take the big picture for the future.

It might be in the interests of consumers and the wider energy market for the administrator, if that day comes—I do not think it will—to prioritise core services. If we keep smart metering working, the other stuff is all very nice, but for a time it could not be a priority, in order to keep the core system going. I believe it must be the role of Government to guide the administrator in that respect, because of the speed that must be taken into consideration within an administration. The precise aim of the regulations is to provide future flexibility to ensure the full range of activities carried out by the DCC at that point can be taken into account. That prioritisation will support the continuation of services in the overall interests of the public.

I believe the Bill delivers the noble aims of the hon. Gentleman's amendment. I hope he will consider what I have said and the explanations I have given, and will agree to withdraw the amendment.

Dr Whitehead: In the context of the fact that what is set out in *Hansard* has some legal bearing, the Minister has this morning set out in terms fairly similar to the amendment the scope of clause 3 and the Government's intention in regulations made under subsection (6). I do not want to press the amendment. I think it is agreed that we aim to ensure that the DCC's circumstances prior to administration should be repeated as closely as possible post-administration for the general good of the roll-out. That is what I understood the Minister to say, and I hope he will confirm that.

Richard Harrington: I confirm that what the hon. Gentleman just said is precisely the case. I tried to be as clear as possible, and I am glad that he, like me, respects that things in *Hansard* are meant to be as they are said. I can clear that one up.

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 20, in clause 3, page 3, line 33, leave out subsection (7) and insert—

'(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

This amendment would apply the affirmative procedure to regulations under Clause 3.

This is the bad bit of clause 3. As stated before, the clause envisages the Minister making regulations to determine which of the DCC's services should be prioritised to continue after administration. We have already agreed that those services should, in principle, be as close as possible to what they were prior to administration.

The Minister has responsibility under subsections (6) and (7) not only to make provision about how the smart meter communication administrator gives priority to specified activities but to produce a statutory instrument to that effect. It is envisaged that the negative procedure would apply to the statutory instrument. Subsection (7) states that the instrument is

"subject to annulment in pursuance of a resolution of either House of Parliament."

That means that the statutory instrument could be prayed against and annulled if a negative resolution is placed before the House. If no one objects to the instrument, it goes through.

I set out in a previous Bill Committee why, in general terms, adopting important regulations by negative means is a bad idea. It is important that the House has proper sight of regulations and a proper opportunity to debate them and decide on them. As I am sure hon. Members know, the negative resolution procedure is a source of considerable dissatisfaction in the House. Under the negative resolution procedure, if we wish to proceed subject to annulment, as the legislation suggests, we have to enter a prayer against the instrument, which is in the form of an early-day motion which suggests that it should be annulled; that it has been noticed, and we do not like it—or at least want to have it debated.

The prayer itself does not stop the passage of the negative resolution in the House. Indeed, there have been occasions when a negative resolution has gone into law and a number of months later it turns out that it is debated in Committee. The time lapse is sometimes because—not to put too fine a point on it—the Whips on the Government side have not conceded that there should be a time-slot available for a debate on that resolution. A prayer is essentially asking, "Please can we have a debate to annul this resolution?"

It is essentially in the gift, in this instance, of the Government Whips, to make time available for that to take place. It is not necessarily going to take place within the period of objection or even within a reasonable period after the objection has been made. So there are circumstances in which, before any light is shed on the negative resolution in the House, that resolution has been in force for quite a period of time. The debate that then takes place in the House is merely an observation on that negative resolution. It is not clear in House procedure whether even a vote for annulment at that point actually annuls that resolution, because it has already been enforced and is in operation.

Negative procedure should be used to place an instrument on the statute book only where the subject is purely technical in content and has no policy implications or wider concerns. In this instance, from the debate we have already had this morning, I suggest that regulations would do rather more than operate in only a very technical set of circumstances. There would be possible policy implications. As the Minister said this morning, Members would want to see that the Government's intentions for the operation of the DCC had been carried out in regulations and would probably want to have a say on those regulations. An affirmative procedure seems to be absolutely the right way to do that.

I remain generally concerned about the extent to which legislation going through the House seems to allow for such negative resolutions. I am afraid that this looks like another instance of that. It is not necessary for the proper passage of a regulation through the House. What the Government want to do to make sure that the regulations work could be perfectly well achieved by a positive procedure; it would not hold it up, it would simply mean that it had to have some light shone on it and would be properly debated in Committee before it proceeded. For that reason, I suggest that it should be subject to the affirmative procedure, and that is what the amendment seeks to do.

The Chair: I remind Members that we have to finish at exactly 11.25 am this morning, so, if there is to be a Division, it might be preferable to have it before then. However, I am, of course, in your hands.

11.15 am

Richard Harrington: Thank you, Mr Gapes. I am sure Opposition and Government alike will take your warning on a Division. I hope it is not necessary because I hope to explain in the time allowed, as I have done with other amendments—some successfully and some less than successfully.

I can see clearly that this amendment would mean that in the unlikely event of insolvency—we all agree it is unlikely—any regulations that we will need to bring forward about the administrator's priorities, which we have discussed before, would need to be approved by a resolution of both Houses. I can see the principle behind that, and it is a noble one, but I would argue that because of the speed required and the technical nature of these regulations, it is appropriate to use the negative procedure, which the hon. Member for Southampton, Test does not like.

I made points in the debates on the previous amendments about the choices that the administrator has to make and the speed with which they have to make them. It is considered reasonable—and I know the hon. Gentleman would agree—that the Government should guide the administrator in respect of this. That is why we are asking for these powers, so that the Secretary of State can make regulations specifying which activities carried out by DCC must be prioritised by the administrator and how this should be done. The question boils down to the nature of these provisions, which I argue are technical and therefore suitable for this kind of procedure.

The DCC has core services that provide energy suppliers and others with around 110 service requests. Again, I would ask both Mr Gapes and the Committee to consider the practicality of the affirmative system. This covers a range of areas, for example the provision of pre-payment services, the management of security credentials, changes of supplier events, the technical configuration of devices, access to network—I could go on, there are 110 of them. It would be necessary to review these services and prioritise them against new services, which I have mentioned before and which may be offered.

I argue that the regulations made under clause 2 would be largely administrative and technical in nature, focused on the specifics of implementation and acting to narrow rather than add to policy scope, entirely to protect consumers' interests. We need to act promptly to achieve this, so that the administrator has appropriate direction. I believe that the procedure proposed will provide Parliament with sufficient oversight for supporting this ambition. I hope, not just because of time constraints but because I think it is the right thing, that the hon. Gentleman will understand our concerns and agree to withdraw his amendment.

Patricia Gibson: I want to speak to this amendment in relation to parliamentary scrutiny. In my party, we would welcome any enhancement of parliamentary scrutiny, but I need to draw the Minister's attention to a number of concerns, and I am worried about time.

I am speaking about the need for enhanced scrutiny because I do not believe that the amendments allow for sufficient scrutiny, for reasons I will go on to discuss. Energy UK and Ofcom both state that aggressive selling is wrong. I am sure we would all concur with that, but that is little comfort until aggressive selling is properly addressed. That is going on and that is why more and enhanced scrutiny is so important.

It is my understanding that Ofgem has the power to fine energy companies up to 10% of their annual turnover if they fail to meet their licence conditions.

Stephen Kerr: I am a little confused about the hon. Lady's line of approach because I cannot see the relevance of what she is saying. It no doubt has lots of merit—I do not dispute that—but I cannot see its relevance to the amendment.

Patricia Gibson: I draw attention to these points because the amendment is about enhanced parliamentary scrutiny. I am simply pointing out the need for further enhancement of such scrutiny, and I wonder what the Minister thinks about that—he is looking at me bewildered.

The Chair: Order. I do not want us to go too far from the amendment. The hon. Lady is focusing on the specific amendment, but I hope we do not go too far in interventions.

Patricia Gibson: I am simply pointing out that Ofgem has the power to fine energy companies up to 10% of their annual turnover if they fail to meet their licence conditions. One relevant licence condition is for each energy company to install smart meters in consumers' homes by the end of 2020, and failure to do so incurs a financial penalty for those energy companies. In respect of parliamentary scrutiny, perhaps that is what gives rise to the aggressive selling about which I and many others are concerned. What does the Minister think about that?

The Chair: Order. The hon. Lady needs to get back to the specific terms of amendment 20.

Patricia Gibson: I simply say that there are a number of concerns about how smart meters are being rolled out.

The Chair: Order. Those concerns can be addressed later in the debate. I wish to focus specifically on amendment 20.

Patricia Gibson: I will raise my concerns at another time.

Richard Harrington: I am happy to talk to the hon. Lady about her consumer concerns, but I agree with your ruling, Mr Gapes, that what she has said is not relevant to this amendment, which is about technical considerations, and parliamentary scrutiny of those, in the event of the demise of the DCC and a special administration regime being put in. The point is not relevant to the amendment, but it is a valid concern. I am happy to discuss it with her informally, if not formally now.

Dr Whitehead: The Minister has alluded to a particular point about regulations under this clause, which relates to the speed that would be necessary to act under the circumstances of administration. That is a defence of the idea that there should be a negative resolution; presumably, the fact that Parliament at that time did not want to proceed to an annulment would allow things to be done speedily. I understand that, so on that narrow point we will not press the amendment to a vote this afternoon.

I draw the Minister's attention to our next debate about a similar set of circumstances that concern a negative resolution, and to which that defence cannot be mounted. I hope that he will take his own words from this morning into account when we return this afternoon to debate the relevant clause. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned. —*(Mike Freer.)*

11.24 am

Adjourned till this day at Two o'clock.